

~~SECRET~~

OGC 7-1186

*C.R.
Publications*

5 August 1957

MEMORANDUM FOR THE RECORD

SUBJECT: General Donovan's Papers

1. Otto Doering called on the 2nd of August and informed us that although General Donovan was a little bit better the doctors still say it is only a matter of weeks or a month.

2. Mr. Doering referred to conversations he had had with Mr. Houston on General Donovan's papers in which apparently Larry had suggested that the papers be brought here since some of them appeared to be classified. Doering indicated that since it was desired to have a book published after Donovan's death on the origin of OSS and CIA with which Mr. Dulles is in favor plus the fact that there are certain personal papers which would not properly belong to the Agency, he felt that it would be necessary to retain the papers until the executor and others had had a chance to separate the purely personal papers. In any event the proposed book would be submitted to the Agency prior to its publication.

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JOHN S. WARNER
Acting General Counsel

cc: Executive Officer
✓ Subject
Chrono.

OGC/JSW:mks

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CONFIDENTIAL

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**CENTRAL INTELLIGENCE AGENCY
25X1 OFFICIAL ROUTING SLIP**

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Remarks:

**Thought you should be aware of the info.
We will keep you advised as the matter
develops.**

John S. Warner

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FROM: NAME, ADDRESS AND PHONE NO.

DATE

Acting General Counsel

5 Aug 57

In a recent decision (Jencks v. U. S.) the Supreme Court held that in a criminal action when the Government, on the grounds of privilege, elects not to comply with an order to produce, for the accused, inspection and for admission in evidence, relevant statements or reports in its possession of Government witnesses touching the subject matter of their testimony at the trial, the action must be dismissed.

Previously the accepted practice had been for the Government to produce such documents to the trial judge for his determination of relevancy and materiality. The judge then decided whether or not such documents had to be submitted as evidence. The Jencks decision, therefore, creates a precedent only in so far as it requires the Government to permit inspection of such documents by the accused before determination of admissibility by the judge.

The decision goes only to the production for inspection by the accused of reports by the witness to a Government agency which are on the same subject matter as his testimony. The decision does not authorize a "fishing expedition" by the accused in the files of the Government agency concerned or of any other agency of the Government. Neither does it require production by a Government agency of reports in its files received from other Government agencies. All that is required is production of reports by the witness on the same facts to which he is testifying in court.

The press has given the Jencks decision a great deal of publicity both pro and con. Alarmist headlines have indicated that the FBI and other investigative and intelligence agencies have been flung into chaos. Such agencies and the Congress in particular are, of course, somewhat concerned but more over possible future interpretations broadening the effect of this decision. There is also the question of the effect of the possible application of this decision in civil actions.

The Jencks decision should have no effect on the files of this Agency or on the information furnished us Witnesses are rarely made available by this Agency and then only after very careful consideration of the testimony they may be required to give. Our information cannot be used as evidence unless we feel that it can be declassified, and the Director of Central Intelligence, is charged by law with the protection of his sources from unauthorized disclosure. The Department of Justice has accepted that the Director's decision in that regard is final even if it means inability to prosecute.

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20 June 1957

MEMORANDUM FOR THE DIRECTOR:

1. This memorandum is for information only:
2. The EDITOR & PUBLISHER, Bible of the newspaper world, urges all newspapers and all newspapermen to get behind two amendments by Senator Hennings to eliminate "secrecy of news" in Washington.
3. Senator Hennings of the Subcommittee on Constitutional Rights has introduced legislation to amend the U.S. Code to eliminate secrecy in the conduct of governmental affairs.

Section 22 of Title 5 of the Code now reads: "22 Departmental Regulations -- The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

The committee has concluded, as most newspapermen have claimed, that the section is a mere "housekeeping" statute. But it has been revealed many times that departmental heads use this statute as authority for withholding information from the public and Congress. Congress never intended it to bestow such authority, the committee says.

The proposed amendment would add this sentence: "This section does not authorize withholding information from the public or limiting the availability of records to the public." The committee feels this would restore the section to its original "housekeeping" function.

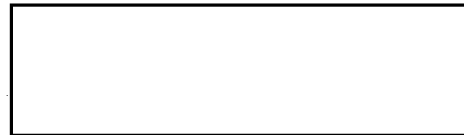
In addition, the committee finds that Section 1002 of Title 5, "Publication of information, rules, opinions, orders and public records,"

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designed to insure adequate information to the public, is also being invoked as authority for denying information to the public because of its ambiguity in spots.

This whole section has been re-written in an amendment.

The concluding section reads: "Exceptions -- The provisions of this section shall not require disclosure of subject matter which is: (1) specifically exempt from disclosure by statute, (2) required to be kept secret in the protection of national security, or (3) of such a nature that disclosure would be a clearly unwarranted invasion of personal privacy; however, nothing in this section authorizes withholding of information or limiting availability of records to the public except as specifically stated in this sub-section."



STANLEY J. GROSSMAN
Assistant to the Director

cc ✓ Gen. Counsel
Legis. Counsel

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TRANSMITTAL SLIP		DATE
TO: <i>General Counsel</i>		
ROOM NO.	<i>921</i>	
REMARKS:	25X1	
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Sec. 3

17 June 1957

Honorable Francis E. Walter
House of Representatives
Washington 25, D. C.

Dear Mr. Walter:

In your letter of 5 June 1957 you asked for our comments on H. R. 7915, which you recently introduced. We have long been concerned with the very serious problem of the relation of confidential information to court actions, one facet of which was explored in the Jencks case. Not only is this Agency custodian of a great amount of information classified in the interest of national defense and security, but also I am charged by the Congress with responsibility for the protection of intelligence sources and methods from unauthorized disclosure.

We have been faced from time to time with situations in which matters under consideration by the courts of this country involved such classified information or the possible revelation in open court of intelligence sources and methods. It has been our practice in these cases to consult with the Department of Justice for guidance on the legal technicalities involved.

I am constrained, therefore, to leave to the Department of Justice comment on the constitutional issues, the problems of due process and the procedural and practical

aspects of H. R. 7915. In general, however, we would endorse any additional legislative protection to our security problems which would be consistent with the American concept of the administration of justice. I appreciate, therefore, the opportunity to review your efforts in this direction as contained in H. R. 7915.

The Bureau of the Budget has advised that it interposes no objection to the submission of this report.

Sincerely,

SIGNED

Allen W. Dulles
Director

CLEARED BY:

Legislative Counsel Date

Roger W. Jones

Asst. Dir. for Legislative Reference Date
Bureau of the Budget

OGC:LRH:jeb

Rewritten: IG/LC/NSPaul:fm (14 June 57)

Distribution:

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- 1 - General Counsel w/ basic ✓
- 2 - Legislative Counsel

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**CENTRAL INTELLIGENCE AGENCY
OFFICIAL ROUTING SLIP**

TO	NAME AND ADDRESS	INITIALS	DATE
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<input type="checkbox"/>	CONCURRENCE	<input type="checkbox"/>	INFORMATION	<input type="checkbox"/>	SIGNATURE

Remarks:

Please note that the boss deleted from the second paragraph "as we feel it is not within our competence to pass on such matters", since he felt that possibly at some future date we might wish to "invoke this prerogative".

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	17 June 57	

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FRANCIS E. WALTER, M.C.
15TH DISTRICT, PENNSYLVANIA

RUTH MISKELL, AD. ASSISTANT
HELEN SUTTON, EXECUTIVE SECY.
SARA BONNER, CLERK
CHARLES BRUCH, CLERK
MARGARET BENTZ, CLERK

Congress of the United States
House of Representatives

Washington, D. C.
June 5, 1957

CHAIRMAN
COMMITTEE ON UN-AMERICAN
ACTIVITIES
SUBCOMMITTEE ON IMMIGRATION

MEMBER
JUDICIARY COMMITTEE
JOINT COMMITTEE ON IMMIGRATION
AND NATIONALITY POLICY
U. S. DELEGATE, INTERGOVERNMENTAL
COMMITTEE ON EUROPEAN MIGRATION

Honorable Allen W. Dulles, Director
Central Intelligence Agency
Washington, D. C.

9-4/19

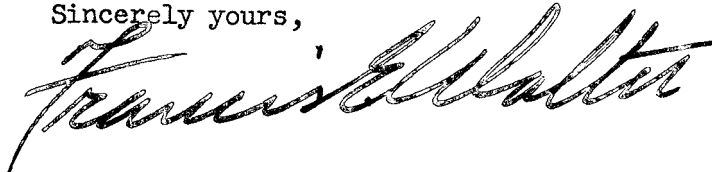
Dear Mr. Dulles:

I am enclosing herewith, a copy of H. R. 7915, which
I introduced yesterday following the Supreme Court's decision
in the Jencks case.

I have asked for immediate hearings on this proposal
and will appreciate any comment you feel free to make concerning
the provisions of this Bill.

Thanking you, I am

Sincerely yours,



FEW/klh

Enclosure

85TH CONGRESS
1ST SESSION

H. R. 7915

IN THE HOUSE OF REPRESENTATIVES

JUNE 4, 1957

Mr. WALTER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 1733 of title 28, United States Code.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That, section 1733 of title 28, United States Code, is hereby
4 amended by adding the following additional subsections:

5 “(c) In any court of the United States and in any court
6 established by act of Congress, any books, records, papers,
7 or documents of any department or agency of the United
8 States which, in the opinion of the Attorney General, con-
9 tain information of a confidential nature, the disclosure of
10 which the Attorney General in the exercise of his discretion,
11 concludes would be prejudicial to the public interest, safety,

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1 or security of the United States shall not be admissible in
2 evidence in any civil or criminal proceeding, over the objec-
3 tion of the Attorney General, unless—

4 “(i) such books, records, papers, or documents
5 have been produced in open court and have been used
6 or relied upon by a witness for the purpose of establish-
7 ing a record of his past recollection, of any events being
8 testified to, or

9 “(ii) such books, records, papers, or documents
10 have been or are produced in open court and are being
11 used or relied upon by a witness for the purpose of
12 refreshing his present recollection of any events being
13 testified to.

14 “(d) Whenever, in any civil or criminal proceeding in
15 any court of the United States or in any court established by
16 act of Congress, demand is made for the production of any
17 books, records, papers, or documents of any department or
18 agency of the United States which have been used or relied
19 upon by a witness in the trial for the purpose of refreshing
20 the witness' recollection, or as a record of his past recollec-
21 tion, such books, records, papers, or documents shall not be
22 produced or admitted in evidence over the objection of the
23 Attorney General unless the trial court, in its discretion and
24 upon personal inspection thereof without disclosure to any
25 party or counsel, determines that such books, records, papers,

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- 1 or documents should be produced in the interest of justice and
- 2 for the protection of the constitutional rights of the party
- 3 affected thereby."

85TH CONGRESS
1ST SESSION

H. R. 7915

A BILL

To amend section 1733 of title 28, United
States Code.

By Mr. WALTER

JUNE 4, 1957

Referred to the Committee on the Judiciary

Jencks Case

During the cross examination Matusow, a chief Government witness, testified that he made both oral and written reports to the FBI on evidence relevant to the issues raised. The defence had filed a motion to require the prosecution to produce these reports in Court for the purpose of impeaching the creditability of the witness. The Government opposed the motion on the sole ground that a preliminary foundation of inconsistency had not been made. The Court of ~~APPEALS~~ Appeals affirmants rested primarily upon ~~the fact~~ that ground.

The Supreme Court cited the Gordon case: "For production purposes it need only appear that the evidence is related, competent, and outside of any exclusions rule. . . ." That case ~~emphasized~~ emphasized determination was for production of . . . specific documents and would not propose any broad or blind fishing expeditions among documents possessed by the Government on the chance that something ~~was~~ impeaching might turn up nor was this a demand for statements taken from persons or informants not offered as witnesses."

Referring to the Matusow reports, the Government said: " Because only the defense is adequately equipped to determine the effective use for purpose of discrediting the Government's witness and thereby furthering the accused's defence the defense must initially be entitled to see them to determine what use may be made of them. Justice requires no less."

The Court follows the Reynolds, Andolschek, and Roviaro decision on the election between privilege and prosecution.

It is to be noted that the Jencks decision not only interprets traditional rules of evidence but deals with ~~the~~ those in question as fundamental rights of litigants. Although there is no express invocation of a Constitutional principle, it has been held that all fundamental rights of litigants are necessarily impeached ~~but~~ by the due process concept. Therefore, it must be concluded that any statute which attempts to override the Jencks decision runs some a risk of being inapplicable to the Jencks type situation because in violation of the due process clause.

HR 7915 permits~~s~~ withholding at the discretion of the Attorney General in any proceeding documents which he concluded to be prejudicial to the public interest, safety or security of the United States unless they have been used by ^a/witness to refresh his memory. This raises the question of the Attorney General's absolute discretion to determine what documents are such that their disclosure would be prejudicial to the "public interest."

In the lower courts the Government in the Jencks case would not assert that the reports were privileged against ~~disclosure~~ disclosure on the grounds of national security, confidential character of the reports, public interest, or otherwise. In its Supreme Court brief, however, the Government argued that absent~~s~~ a showing of contradiction the rule urged by the defendant disregarded the legitimate interest that each party, including the Government had in safeguarding the privacy of its files, particularly where the documents in question were obtained in confidence.

It would appear then that the Attorney General had in connection with the Jencks Case made a determination that disclosure was not in the public interest of reports made by a witness whose identity was already known and the contents of which reports he himself described on the witness stand.

The court in the Jencks case emphasized the value of the documents ~~xxx~~ to the defense and objected to the requirements of a showing of conflict as being beyond the power of the defendant to accomplish. Therefore, said the Court; "A requirements of a showing of conflict would be clearly incompatible with our standards for the admission of criminal justice in the Federal Courts and must therefore be rejected. For the interest of the United States in a criminal prosecution 'is not that it shall win a case but that justice shall be done.'"

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Approved For Release 2004/05/12 : CIA-RDP62-00631R000400050025-7

Approved For Release 2004/05/12 : CIA-RDP62-00631R000400050025-7